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15 *Ultimate Fighting Championship and UFC*

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17  
18 UNITED STATES DISTRICT COURT  
19 DISTRICT OF NEVADA  
20

21 Cung Le, Nathan Quarry, Jon Fitch, Brandon  
22 Vera, Luis Javier Vazquez, and Kyle  
Kingsbury on behalf of themselves and all  
23 others similarly situated,

24 Plaintiffs,

25 v.

26 Zuffa, LLC, d/b/a Ultimate Fighting  
Championship and UFC,

27 Defendant.  
28

Case No.: 2:15-cv-01045-RFB-(PAL)

**DECLARATION OF JOHN F. COVE, JR.  
IN SUPPORT OF ZUFFA, LLC'S  
MOTION TO SEAL PRIVILEGED AND  
CONFIDENTIAL DOCUMENTS IN  
SUPPORT OF ZUFFA'S OPPOSITION  
TO PLAINTIFFS' MOTION TO  
CHALLENGE PRIVILEGE  
DESIGNATION**

1 I, John F. Cove, Jr., declare as follows:

2 1. I am an attorney admitted to practice before the courts in the states of California  
3 and New York and am admitted Pro Hac Vice to practice before this Court. I am a Partner in the  
4 law firm Boies, Schiller & Flexner LLP, counsel to Defendant Zuffa, LLC (“Zuffa”) in this case.

5 2. I make this declaration in support of Zuffa’s Motion to Seal Privileged and/or  
6 Confidential Documents in Support of Zuffa’s Opposition to Plaintiffs’ Motion to Challenge  
7 Privilege Designation. Based on my review of the files and records in this case, I have firsthand  
8 knowledge of the contents of this declaration and could testify thereto.

9 3. Zuffa seeks to file under seal (1) an unredacted copy of the Zuffa’s Opposition to  
10 Plaintiff’s Motion to Challenge Privilege Designation (“Zuffa’s Opposition”); (2) an unredacted  
11 copy of the Declaration of Charles Thomas Paschall in support of Zuffa’s Opposition; and (3)  
12 four exhibits identified as Exhibits A, B, C, and D to the Declaration of Marcy Norwood Lynch in  
13 support of Zuffa’s Opposition. This declaration is submitted to provide the factual and legal  
14 support for the filing of this material under seal.

15 4. Federal Rule of Civil Procedure 26(c) provides that the Court may “issue an order  
16 to protect a party or person from annoyance, embarrassment, oppression or undue burden or  
17 expense” by “requiring that a trade secret or other confidential research, development, or  
18 commercial information not be revealed or be revealed only in a specific way.”

19 5. The designated portions of the **Paschall Declaration** reflect the substance of  
20 privileged and confidential attorney-client communications between Zuffa and its outside counsel  
21 at the law firm of Milbank, Tweed, Hadley, and McCloy LLP, including a January 31, 2007 e-  
22 mail from Mr. Paschall, who at that time was a lawyer at Milbank representing Zuffa and its  
23 affiliates in the matter of acquiring assets from Dream Stage Entertainment, to Zuffa’s managers,  
24 CEO, and COO, as well as two other lawyers at Milbank. That e-mail, which Plaintiffs lodged  
25 under seal as Exhibit 3 to their Motion to Challenge Privilege Designation, has been designated  
26 Confidential under the Protective Order and its privilege has been asserted at all times by Zuffa.

27 6. **Exhibit A to the Lynch Declaration** is a communication from Zuffa’s counsel to  
28 the staff at the Federal Trade Commission in the course of Zuffa’s response to a subpoena duces

1 tecum from the Commission made pursuant to statutory assurances of confidentiality under 15  
2 U.S.C. § 57b-2.

3 7. **Exhibit B to the Lynch Declaration** is a communication from staff at the Federal  
4 Trade Commission to Zuffa's counsel in the course of Zuffa's response to a subpoena duces  
5 tecum from the Commission reflecting communications made by Zuffa to the Commission  
6 pursuant to statutory assurances of confidentiality under 15 U.S.C. § 57b-2.

7 8. **Exhibit C to the Lynch Declaration** is a communication from Zuffa's counsel to  
8 the staff at the Federal Trade Commission in the course of Zuffa's response to a subpoena duces  
9 tecum from the Commission made pursuant to statutory assurances of confidentiality under 15  
10 U.S.C. § 57b-2.

11 9. **Exhibit D to the Lynch Declaration** contains material provided by Zuffa to the  
12 Federal Trade Commission in the course of Zuffa's response to a subpoena duces tecum from the  
13 Commission pursuant to statutory assurances of confidentiality under 15 U.S.C. § 57b-2.

14 10. The designated portions of **Zuffa's Opposition** contain and reflect excerpts from  
15 each of the documents containing privileged and/or confidential information described in  
16 paragraphs 6-9 above, and also excerpts from a privileged and confidential communication that  
17 was lodged under seal by Plaintiffs as Exhibit 3 to their Motion to Challenge Privilege  
18 Designation. That communication, which Plaintiffs lodged under seal as Exhibit 3 to their Motion  
19 to Challenge Privilege Designation, has been designated Confidential under the Protective Order  
20 and its privilege has been maintained by Zuffa.

21 11. Zuffa has taken substantial measures to preserve the confidentiality of the  
22 privileged attorney-client communication reflected in Zuffa's Opposition and the Paschall  
23 Declaration, including asserting its claim of privilege over the confidential attorney-client  
24 communications in the document, protecting the image of the communication with a slipsheet  
25 denoting the document's content as privileged, and undertaking immediate efforts to clawback the  
26 inadvertent production of its underlying text. The Declaration of Marcy Norwood Lynch (filed  
27 herewith) describes the inadvertent disclosure to the Plaintiffs of this document.  
28

13. It is my understanding that Zuffa relied upon the statutory assurances of confidentiality embodied in 15 U.S.C. § 57b-2 in communicating with the FTC as reflected in the materials and information included as Exhibits A, B, C, and D to the Lynch Declaration.

/s/ John F. Cove, Jr.  
John F. Cove, Jr.